

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
**Honolulu, Hawai'i**

March 24, 2023

**Board of Land and  
Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i**

**REGARDING:** Contested Case Request Regarding the Approval of the  
Mauna Kea *Comprehensive Management Plan 2022  
Supplement: Management Actions Update*

**PETITIONER:** Laulani Teale

**LANDOWNER:** State of Hawai'i

**LOCATION:** Mauna Kea Science Reserve, Ka'ohe, Hāmakua,  
Hawai'i

**Tax Map Keys (TMKs):** (3)4-4-015:009 (Mauna Kea Science Reserve),  
11,287.854-acres  
(3)4-4-015:012 (Halepōhaku), 19.261-acres  
(3)4-4-015:001 (portion; Roadway Easement),  
70.798-acres

**SUBZONE:** Resource

**BACKGROUND:**

The Mauna Kea Comprehensive Management Plan (CMP) was developed by the University of Hawai'i (UH) for the Mauna Kea Science Reserve which encompasses 11,288-acres of State land leased to the UH Institute for Astronomy under General Lease S-4191; the mid-level facilities at Halepōhaku that include support facilities for the observatories, encompassing ≈19-acres under General Lease S-5529; and the Summit Access road that extends from Halepōhaku to the boundary of the Science Reserve under Grant of Easement S-4697. See ***Exhibit 1***.

On April 9, 2009, the Board of Land and Natural Resources (BLNR) approved the University of Hawai'i's Mauna Kea Comprehensive Management Plan subject to eight (8) conditions. On July 22, 2022, the BLNR approved the Mauna Kea *Comprehensive Management Plan 2022 Supplement: Management Actions Update* (2022 Supplement).

An oral request at the July 22, 2022, BLNR meeting and a timely written petition requesting a contested case was received by the Department from the Petitioner, Laulani Teale (***Exhibit 2***).

## RECEIVED PETITION

According to the petition filed by Laulani Teale, she asserts that she is a native Hawaiian cultural practitioner with genealogical ties to Mauna Kea. These practices include traditional astronomy, healing practices, spiritual and religious practices which involve the carrying of prayers to Mauna Kea, gathering of sacred waters and medicines when needed, or assisting other Mauna Kea practitioners in doing so. Additionally, Laulani Teale states in the petition that her great-great grandparents lived near the above-water base of Mauna Kea and are buried at the above-water base of Mauna Kea.

## **ANALYSIS**

Pursuant to §91-1(5), of the Hawai'i Revised Statutes (HRS), a contested case hearing is one where the "legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." A contested case is "required by law" if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if mandated by due process.<sup>1</sup>

There is no statute or rule calling for a contested case hearing in the context of the Board's approval of the 2022 Supplement.

Nor do the due process clauses of the state and federal constitutions provide a basis for a contested case hearing. Hawai'i's courts have developed a two-step analysis to determine if a claimant is entitled to a due process hearing. First, the court looks at whether the particular interest is "property" within the meaning of the due process clauses of the federal and state constitutions. Second, the court determines what specific procedures are required to protect the interest asserted.<sup>2</sup>

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."<sup>3</sup>

In this instance, the Petitioner cannot show a property interest in the 2022 Supplement or that the 2022 Supplement will affect any property in which the Petitioner has an interest.

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<sup>1</sup> The Fourteenth Amendment to the United States constitution provides, in part, "nor shall any state deprive any person of life, liberty, or property, without due process of law." Article I, Sec. 4 of the Hawai'i Constitution provides, in part, "[n]o person shall be deprived of life, liberty or property without due process of law."

<sup>2</sup> Alejado v. City & County of Honolulu, 89 Haw. 221, 226-27, 971 P.2d 310, 315-16 (Haw. App. 1999).

<sup>3</sup> Id., 89 Haw. at 227, 971 P.2d at 316 (citing Bd. of Regents v. Roth, 408 U.S. 564 (1972)).

The 2009 CMP provides UH with a tool for agency planning and management of lands over which it has assumed control. Specifically, Section 7 contemplates management actions (103 actions) for the UH management area atop Mauna Kea as well as reporting requirements. The 2022 Supplement applies the concept of adaptive management to update the management actions and contains twelve (12) categories or sections with each containing a discussion of the desired outcomes and the associated management actions.

The contested case requirements contained in Chapter 91, HRS, do not apply to UH's internal management of its leased lands. To the extent the 2022 Supplement is an application of an adaptive management strategy to update its internal management tool (the 2009 CMP), it is not subject to a due process property interest by the public.

The 2022 Supplement does not permit or authorize any new land use or development on Mauna Kea, including telescope projects. New projects will still be subject to all legal requirements including the environmental requirements of Chapter 343, HRS and Conservation District permitting requirements under Section 183C-6, HRS. Thus, the 2022 Supplement will not affect any property in which the Petitioner may have an interest.

Even if the 2022 Supplement implicates property interests of the Petitioner, which it does not, the present challenge to the 2022 is not ripe for review. Withholding immediate review will not cause undue hardship on the Petitioner, as the 2022 Supplement does not alter their legal rights or obligations. Approval of the 2022 Supplement does not guarantee any future development within the Mauna Kea Science Reserve or the other UH management areas.

The BLNR approved the 2009 CMP subject to UH's submission of subplans for cultural resources management, natural resources management, decommissioning of telescopes, public access, and a management and implementation framework for the development of projects that are consistent with the specific management actions, conditions, and policies of the 2009 CMP. The 2022 Supplement is an update to the existing management actions contained in the 2009 CMP and provides guidance to the University or to any authority that assumes management responsibilities on Mauna Kea. A contested case at this juncture would interfere with UH's ability to complete its subplans, carry on with existing management actions, and fulfill reporting requirements.

The 2009 CMP and the 2022 Supplement may be subject to challenge later, during conservation district permit application proceedings as CMP revision could be required for new development. Thus, there is no reason for allowing a challenge to go forward now.

As such, the BLNR is not required by law to conduct a contested case hearing on the petitions.<sup>4</sup>

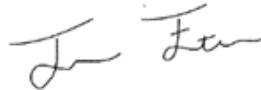
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<sup>4</sup> Pursuant to HAR, §13-1-29.1, the Board without a hearing may deny a request for a contested case "when it is clear as a matter of law that the request concerns a subject that is not within the adjudicatory jurisdiction of the board or when it is clear as a matter of law that the petitioner does not have a legal right, duty, or privilege entitling one to a contested case proceeding."

**RECOMMENDATION:**

That the Board of Land and Natural Resources deny the request for a contested case in regard to the *Mauna Kea Comprehensive Management Plan 2022 Supplement: Management Actions Update* by Laulani Teale.


Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands



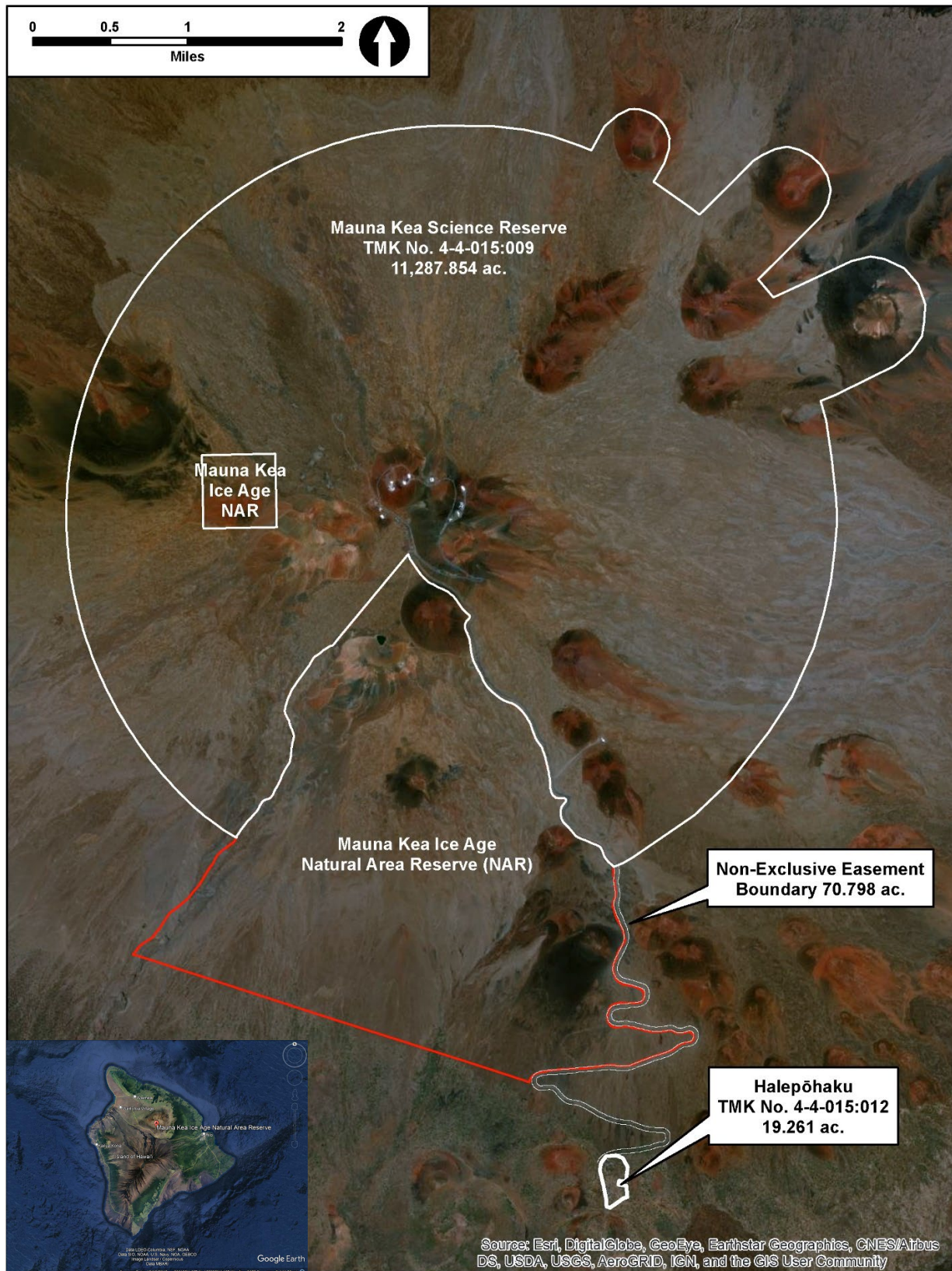
Approved for submittal:



p.p.

Dawn Chang, Chairperson  
Board of Land and Natural Resources

Figure 1.1: UH Maunakea Lands





STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED

2022 AUG -1 PM 4:27

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:  
Department of Land and Natural Resources  
Administrative Proceedings Office  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813  
Phone: (808) 587-1496, Fax: (808) 587-0390
2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
5. All materials, including this form, shall be submitted in three (3) photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Laulani Teale	2. Contact Person	
3. Address PO Box 61508	4. City Honolulu	5. State and ZIP HI
6. Email laulani@gmail.com	7. Phone 8082566637	8. Fax

9-16. No Attorney.

17. Board Action Being Contested

Item K-2: "Approval of the Center for Maunakea Stewardship's 2022 Mauna Kea Comprehensive Management Plan 2022 Supplement: Management Actions Update for the Mauna Kea Science Reserve at Kaoha Mauka, Hamakua District, Hawaii, Tax Map Key Nos. (3) 4-4-015:009, 012, and 001"

**18. Board Action Date** 7/22/22

**19. Item No.** K-2

**20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case**

Chapter 13-1, HAR, HRS chapter 183C, chapter 171, and Hawai'i constitution art 12, section 7; article 11 sections 1& 9

**21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection**

I am a longtime Kanaka Maoli cultural practitioner of Mauna Kea. I am a student of many great cultural practitioners of Mauna Kea, many of whom are no longer with us, and carry on sacred traditional and customary practices they have taught me, and work to ensure that this knowledge is passed to future generations. These practices include traditional astronomy, healing practices, spiritual and religious practices, and more. Pono itself is a focus of my cultural training and practice, as is aloha 'āina. I also work for the health of our lāhui in a public health capacity, and have kuleana passed to me by great Kanaka Maoli health leaders for improving the health and well being of Kanaka Maoli whose health is impacted by colonialism, including forced assimilation. I care for youth who have ties to Mauna Kea. I also take care of elders associated with Mauna Kea, and carry out work for them there. As a religious practitioner, I carry prayers to Mauna Kea for those who need them, and gather sacred waters and medicines when needed, or assist other Mauna Kea practitioners in doing so. My great-great grandparents lived near the above-water base of Mauna Kea and are buried at the above-water base of Mauna Kea. I have worked to protect Mauna Kea for decades. My children have been part of the work to protect Mauna Kea from birth. Dear friends and relatives and teachers of mine are and have been involved in the protection of Mauna Kea. Their health has been seriously affected by the difficulty of this work and the many obstacles to cultural practice, and this in turn affects me and my family. My health has been affected also. My children have endured great stress related to blockage of our cultural practice and that of those close to our family. Other practitioners we know, and their families, have endured great stress due to restriction of their access and other aspects of colonization related to Mauna Kea. Some have not survived. This affects us severely.

**22. Any Disagreement Petitioner May Have with an Application before the Board**

- Inadequate time was given for review of the CMP, and inadequate outreach was conducted, The supplements total over 600 pages - this is far too cumbersome for most community members to sufficiently review without far better support. Many who are affected could not possibly even download such large files. Most of the public was unaware of this matter coming before BLNR. There is known confusion with the UH Master Plan, and no real effort was made to correct this. Many other problems — with the information delivery, layout, wording and more — create significant barriers for



access, review, comment, and relief. While many of these problems might at first seem small, the cumulative community effect is significant and malignant.

- Cultural Resource management action No. 2 (CR-2), which provides: “Support application for designation of the summit region of Maunakea as a Traditional Cultural Property [TCP], under the National Historic Preservation Act of 1966, Public Law 89-665, as amended” is reinterpreted in the 2022 CMP to refer to very limited portions of the summit region that would render TCP status practically meaningless, thus interfering with the protection of Mauna Kea as a whole, and thereby affecting all whose well-being is connected to protection of Mauna Kea as a whole.
- The CMP specifically and overtly excludes many key issues from discussion, without which it is not possible to address major community concerns, build lasting solutions, or many other important needs. These include: - Whether or not the existing general lease between UH and DLNR and/or the CDUP for the TMT project (HA-3568) should, or should not, be terminated. - Whether or not a new land authorization that would allow for astronomy to continue on Maunakea beyond 2033 should, or should not, be awarded in the future. - Whether UH is, or is not, the appropriate entity to manage the cultural landscape and natural resources in the summit region or access to this sensitive area. - Whether or not the state’s activities, uses, and management of Maunakea accord with the United Nations Declaration on the Rights of Indigenous Peoples. - The lands now known as the UH Maunakea Lands were “stolen” from the Hawaiian Kingdom. - The annexation of Hawai’i by the United States was not legal. - The assertion of Hawaiian sovereignty.
- the 2022 CMP does not address how this plan interfaces with Act 255, 2022 Session Laws of Hawai’i (Mauna Kea Management Authority), nor does it discuss transition to this new authority, which the next 5 years should be dedicated to, rather than to the updated contents of this plan. UH has no need to assert any plan, as they will no longer be managing Mauna Kea. An interim plan should be decided by the community and the new management entity. This should include discussion with UH, but not determination by UH.
- This CMP unlawfully delegates and or transfers jurisdiction of the Kapa’akai analysis to the the University of Hawai’i. It is BLNR’s job to properly perform, evaluate and execute the Kapa’akai analysis and it may not be delegated to another entity that is not legally mandated to carry out this responsibility, nor capable of doing so.
- The CMP fails to address the Public Trust Doctrine (PTD) regarding the adequate protections of our water. It further fails to address and provide adequate protections for our rights relating to sewage and hazardous waste, storage, handling and disposal.
- This CMP excessively regulates Native Hawaiian (Kanaka Maoli) State constitutional and statutory rights, duties and privileges. Including the right to continue to practice traditional and customary religious and cultural practices. The CMP If fails to uphold Indigenous religious protections provided under the United States Constitution and other related laws.
- the 2022 CMP references the 2019 Mauna Kea rules and commits to their implementation. These rules, which were extremely strongly opposed by Kanaka Maoli cultural practitioners, interfere with cultural practices and are unconstitutional. They are

## ***Exhibit 2***



also impractical, and problematic in many other ways. This commitment by UH to the implementation of these rules contradicts their claim that the CMP does not interfere with Kanaka Maoli cultural practices.

- No distinction is made in the CMP between traditional cultural practitioners and the general public. No training is given or proposed to assist personnel in making this distinction. The effect of this is that in most ways, a lifelong master practitioner of ancient Mauna Kea practices is, for all practical purposes, treated the same as and given the same rights as a tourist, and has far fewer access rights than a newly-arrived astronomy staff person with no prior association to Hawai'i at all. This is unacceptable and unconstitutional. The affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights is simply not upheld in the CMP.
- The international standard of Free, Prior and Informed Consent is disregarded in this CMP and in the process surrounding it. The United Nations Declaration on the Rights of Indigenous Peoples was excised from, rather than upheld in this plan.
- This CMP harms public health, and particularly Kanaka Maoli health, in many ways. Stress, pressure, forced assimilation, displacement and many other known harms are increased by the methodology this plan proposes.
- The process of the CMP is harmful to Kanaka health. Like the structure within the CMP, the process causes extreme stress, diverts and displaces energy that is needed for cultural focus, family, self-care and community work, and disempowers Kanaka Maoli, including myself.
- Taken as a whole, this CMP and the processes surrounding it meet the criteria (ie proven intent to physically destroy a national, ethnical, racial or religious group) for a component of incremental genocide. Forced assimilation, destruction of Indigenous culture, knowing (and therefore intentional) harm to health to the point of causing physical death, knowingly causing serious cumulative physical and mental harm, disregarding cries for help, deliberately inflicting on the group conditions calculated to bring about its known physical destruction in whole or in part, and killing people by willfully depriving them of essential components of their well-being are all established elements of genocide, and all of these are readily apparent in this CMP and its process.

### 23. Any Relief Petitioner Seeks or Deems Itself Entitled to:

This CMP should be cancelled permanently. It should not be adopted. An apology should be issued to the community. Kanaka cultural practices should be fully protected. Waters should be given overdue protection. Mauna Kea should be protected, as a whole. BLNR should overhaul its decision-making process to facilitate genuine civil community involvement. BLNR and the State of Hawai'i as a whole should recognize the international standard of free, prior, and informed consent on all land matters and decline projects that do not have this consent. The State of Hawai'i should work to peacefully dismantle itself, and to decolonize Hawai'i and facilitate cooperative deoccupation of Hawai'i by the United States, while fully and sincerely upholding US federal laws relating to land, water and culture. None of these sincere and legitimate requests should be used as an excuse to dismiss the others.

## ***Exhibit 2***

#### 24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

A Contested Case is a peaceful process whereby a petitioner may assist in clarifying needed elements of public interest, such as compliance with applicable laws and standards that may not have been adequately considered in its regular decision making process. The Board of Land and Natural Resources can certainly benefit from assistance in attaining compliance with State and federal laws, and international Indigenous, environmental and human rights standards, as well as cultural criteria in this matter. As a peace worker, cultural practitioner, human rights advocate, medicine worker, public health researcher and practitioner and longtime community worker connected to Mauna Kea through decades of work as well as generations of 'ohana, the public's interest would most certainly be served by expanding the Board's understanding of this important matter.

#### 25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Section 13-1-31, HAR (2) says that a contested case may be requested by: "All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application."

I meet this criteria because my gathering practices for sacred medicines, and the traditions of Iaaui lapaau entrusted to me, are directly affected by this Comprehensive Management Plan. My ability to carry on the work of my traditional Kanaka Maoli arcaeo-astronomy teachers is directly affected by this Comprehensive Management Plan. My ability to care for myself, my family, and my community is directly affected by this Comprehensive Management Plan. My health is directly affected by this Comprehensive Management Plan. The well-being of my community is directly affected by this Comprehensive Management Plan. My 'āina is directly affected by this Comprehensive Management Plan, including Mauna Kea, upon which my Kupuna resided. Because Mauna Kea is Crown Lands belonging to the sovereign of the Hawaiian Kingdom, I also have a property interest as a citizen of Hawai'i, the ownership of which was never legally dissolved, despite illegal occupation for over one century by the United States.\* I further have a property interest under the Admissions Act of the United States (Pub.L. 86-3, 73 Stat. 4, enacted March 18, 1959), which states in condition 5(f) that State lands shall be used for the "betterment of the conditions of native Hawaiians" and "public use."

\* It is important to clarify that my assertion of the illegality of the United States' occupation of Hawai'i in no way exempts the State of Hawaii from following its own laws, nor does it dull or null my rights under these laws in any way.